

**Remarks of Justice Elizabeth A. Weaver
House/Senate Judiciary Committees
Tuesday, June 22, 2004
9 a.m. / 1 p.m.**

Good afternoon. Let me reinforce what Chief Justice Corrigan said earlier, and that is that we appreciate your evident interest in the plight of our state's foster children. As a former probate and juvenile judge, I can tell you that it is truly heartbreaking to see all the children who linger in the foster care system year after year. Anything that we can do to help move them out of this limbo and into permanent homes should be done.

We've come here today to ask for meaningful changes in the Juvenile Code. Its goals are clear: child safety, preserving families where appropriate, and moving foster children towards permanent homes. I believe the legislation has done much to further those worthy objectives.

But, as you all know, it is never possible to anticipate all the consequences of legislation. With the benefit of several years' experience with the legislation, in addition to the federal audits that Chief Justice Corrigan mentioned earlier, we see a need to clarify some aspects of the law. In addition, we realize that Michigan needs to comply with the federal Adoption and Safe Families Act, especially when lack of compliance means losing federal aid for state foster care programs.

Let me give you, briefly, the highlights.

I will begin with the proposed revisions affecting the obligations of lawyer-guardians ad litem, known as LGALs, the attorneys who are appointed to represent children in abuse and neglect cases. The LGAL's role is critical. For children to

have a voice in the process, they must have effective legal advocates; for LGALs to be effective advocates for their child-clients, they must have complete and timely information, which includes knowing the child's needs, history, and wishes.

Accordingly, these revisions define the "agency case file" – the current file from whichever agency is providing services to the child – as the file that the LGAL is obligated to review before disposition and termination of parental rights. Additional revisions spell out what information the supervising agency must provide and states that the agency must provide that information within five business days before the hearing, so that the attorney has adequate time to prepare. We believe that these revisions will help improve the quality of legal representation for children.

You have doubtless seen a number of newspaper articles, particularly in the Detroit Free Press, stating that a number of LGALs either meet their child-clients very seldom or do not meet with them at all. Currently, the Juvenile Code requires the LGAL "to meet with and observe the child" before each hearing. LGALs have argued that this requirement is unduly burdensome, particularly where the child lives out of state or where other circumstances make it difficult to schedule in-person visits. In addition, many foster children are of an age where they can, and indeed would prefer to communicate with their LGALs by phone. We propose retaining the "meet and observe" language, but with a provision that would "allow alternative means of contact with the child" other than face-to-face meetings "if good cause is shown on the record." This proposed revision also lists the hearings before which the LGAL must "meet with and observe" the child-client. Again, by making it crystal-clear what the LGAL's obligations are, and by tying those

obligations to important events for the child, we're furthering the goal of effective representation.

Another group of revisions would slightly modify certain time frames to ensure that Michigan does not run afoul of federal law and thereby incur penalties, as Chief Justice Corrigan mentioned earlier, in the form of losing federal funds for Michigan's foster care programs. ASFA calls for the first review hearing to be held not more than 182 days after the child has entered foster care. The recent audits in Michigan by Health and Human Services indicate that some hearings have been held past time limits. In Michigan, it's possible for a court to observe all the state time limits and hold the first review hearing 189 days after the child enters foster care, thus violating ASFA. To eliminate this possibility, the revised section would track ASFA by requiring the court to hold a review hearing "not more than 91 days after the child has been removed and not more than every 91 days thereafter for the first year the child remains under the court's jurisdiction," in keeping with the federal 182-day limit. As you can see, with this revision, the court would hold a minimum of three review hearings in the first year. There's a good reason for having frequent reviews in the first year after removal, because we know from experience that the family's best opportunity for reunification is during that first year. The permanency planning hearing would be conducted 273 days after the initial disposition hearing, or one year after removal, again in keeping with ASFA. After the first year, additional review hearings would be held at least once every 182 days. Please note: the court's ability to hold hearings sooner than required would

not be affected by these changes. If a judge believes that more frequent reviews are called for, he or she may certainly schedule hearings at shorter intervals.

Again in the area of timelines, we propose that courts hold permanency planning hearings “12 months from the date of the child’s removal.” instead of “within 1 year after an original petition has been filed.” The 12-month period is easier to calculate and will ensure that Michigan complies with ASFA.

Another revision would define “relative” to include the parent of a biological father, where the child does not have a legal father. This revision is consistent with the definition used by Temporary Assistance to Needy Families. Under TANF’s definition, the parent of a child’s biological father is a “relative” and the grandparent is eligible to receive aid if he or she is caring for and living with the child. Now, this revision would come into play only if the child does not have a legal father and if the court determines that the putative father is indeed the child’s biological father. Note, also, that such a determination does not give the child’s putative father standing in the proceeding or make him eligible as a placement. All this provision means is that the grandparent would be among those considered for placement and could, if the child is placed with him or her, be eligible for aid under TANF. A similar revision to section 18 would allow the court to place a juvenile offender who is on probation in the home of the putative father’s parent.

Finally, another amendment would give the Foster Care Review Board seven days to investigate a change in foster care placement and three days to report its findings to the court. As you probably know, the FCRB’s functions include providing panels, composed of volunteers, to hear foster parents’ appeal of an

agency's decision to remove the child from that foster home. The current statute gives the FCRB only three days to investigate the change and report its findings to the court. The three-day limit prevents the FCRB from conducting an adequate investigation. In addition, the Family Independence Agency lacks adequate time to conduct a license investigation, and protective services does not have enough time to complete its own investigation. Please note that this provision would not apply to emergency situations, in which the child would be removed as provided by the statute.

I believe that these proposed revisions will further two goals, the first and most important of which is protecting children and moving them toward permanent homes, whether with their biological parents or elsewhere. Secondly, as Chief Justice Corrigan pointed out, we are all mindful of the need to comply with federal law, coupled as it is with the threat of federal penalties. Our proposed changes would help ensure that our state does not risk losing federal funding, particularly when it affects such a vulnerable group as foster children. Thank you.
